UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
(White Plains Division)

14 CV 4327

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JOHN S. FERRAO,

Plaintiff,

-against-

ROCKLAND COMMUNITY COLLEGE OF THE STATE UNIVERSITY OF NEW YORK (SUNY-ROCKLAND); Public Safety Sergeant JENKINS (first name unknown), individually; Public Safety Officer KELSCH (first name unknown) and Public Safety Officer SERWATIEN (first name unknown), individually, security officers of SUNY-ROCKLAND; DEPUTY JOSE NUNEZ, and SERGEANT JOHN CUFFARI, individually, officers of the Rockland County Sheriff's Department; and the COUNTY OF ROCKLAND,

Defendants.

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Civil Action No.:

COMPLAINT
(TRIAL BY JURY DEMANDED)

JUDGE KARAS

USDC WP SDNY
FILED
JUN 16 2014

Plaintiff JOHN S. FERRAO, by and through his undersigned attorney, brings this Complaint against the above-named defendants and their employees, agents and successors in office, and in support thereof alleges the following on personal knowledge as to himself and his own actions and upon information and belief as to all other matters:

PARTIES

1. Plaintiff JOHN S. FERRAO is a citizen of the United States and resides in the State of New York, County of Rockland.

2. Defendant ROCKLAND COMMUNITY COLLEGE OF THE STATE UNIVERSITY OF NEW YORK (SUNY-ROCKLAND) is an entity of the State University of New York organized and existing for the purpose of higher education under the laws of the State of New York and regulations of the Department of Education of the State of New York and the

Board of Regents of the University of the State of New York, and having an extension facility at 183 North Main Street in the Village of Spring Valley, New York, and its principal campus and administrative offices at 145 College Road in the Village of Suffern, New York.

3. Defendant SERGEANT JENKINS (first name unknown to plaintiff) is an agent, servant or employee of the Office of Public Safety of co-defendant SUNY-ROCKLAND, and is sued in the defendant's individual capacity. SGT. JENKINS is a "person" and a "state actor" within the meaning of Title 42 U.S.C. Section 1983 and, at all times pertinent to this action, was acting under color of state law as a public safety officer employed, trained, and supervised by defendant SUNY.

4. Defendant OFFICER KELSCH (first name unknown to plaintiff) is an agent, servant or employee of the Office of Public Safety of co-defendant SUNY-ROCKLAND, and is sued in the defendant's individual capacity. KELSCH is a "person" and a "state actor" within the meaning of Title 42 U.S.C. Section 1983 and, at all times pertinent to this action, was acting under color of state law as a public safety officer employed, trained, and supervised by SUNY.

5. Defendant OFFICER SERWATIEN (first name unknown to plaintiff) is an agent, servant or employee of the Office of Public Safety of co-defendant SUNY-ROCKLAND, and is sued in the defendant's individual capacity. SERWATIEN is a "person" and a "state actor" within the meaning of Title 42 U.S.C. Section 1983 and, at all times pertinent to this action, was acting under color of state law as a public safety officer employed, trained, and supervised by SUNY-ROCKLAND.

6. Defendant COUNTY OF ROCKLAND (ROCKLAND COUNTY), upon information and belief, is a municipal corporation organized and existing under the constitution and laws of the State of New York, with its principal offices located in the Allison-Parris

Building, 11 New Hempstead Road, in the hamlet of New City, in the Town of Clarkstown, New York, and that employs, trains, and supervises deputy sheriffs and sheriff's officers, including defendant NUNEZ.

7. Defendant DEPUTY JOSE NUNEZ is an agent, servant or employee of the Sheriff's Department of co-defendant County of Rockland and is sued in the defendant's individual capacity. NUNEZ is a "person" and a "state actor" within the meaning of Title 42 U.S.C. Section 1983 and, at all times pertinent to this action, was acting under color of state law as a deputy sheriff employed, trained, and supervised by defendant ROCKLAND COUNTY.

8. Defendant SGT. JOHN CUFFARI is an agent, servant or employee of the Sheriff's Department of ROCKLAND COUNTY and is sued in the defendant's individual capacity. SGT. CUFFARI is a "person" and a "state actor" within the meaning of Title 42 U.S.C. Section 1983 and, at all times pertinent to this action, was acting under color of state law as a sheriff's officer employed, trained, and supervised by defendant ROCKLAND COUNTY.

9. Defendants ROCKLAND COUNTY and SUNY-ROCKLAND are responsible for training, controlling, and supervising their respective law enforcement officers and for adopting rules and regulations, setting and determining policy, and overseeing the operations of their employees, including law enforcement and campus security personnel.

10. At all times relevant hereto, ROCKLAND COUNTY, SUNY-ROCKLAND, and their officials, agents, servants, or employees were persons within the meaning of 42 U.S.C. Section 1983 and were acting under the color of state law within the meaning of 42 U.S.C. Section 1983.

JURISDICTION AND VENUE

11. This civil action arises under the First, Fourth, and Fourteenth Amendments to the

United States Constitution and 42 U.S.C. Section 1983. Jurisdiction is conferred on this Court pursuant to 28 U.S.C. Sections 1331 and 1343(a)(3).

12. Plaintiff's claims for declaratory relief are authorized by 28 U.S.C. Sections 2201 and 2202, by Rule 57 of the Federal Rules of Civil Procedure, and by the general legal and equitable powers of this Court.

13. Plaintiff's claims for damages are made pursuant to 42 U.S.C. Section 1983. Plaintiffs' prayer for relief regarding costs, including reasonable attorneys' fees, is authorized by 42 U.S.C. Section 1988.

14. Venue is proper under 28 U.S.C. Section 1391(b) because a substantial part of the events or omissions giving rise to plaintiff's claims occurred in this district, where plaintiff resides.

FACTS COMMON TO ALL COUNTS

15. Plaintiff JOHN S. FERRAO is a sincere practitioner of the Roman Catholic religion and, as such, plaintiff is compelled by his conscience to exercise his First Amendment right to give witness in the public square, both individually and in assembly with like-minded persons, to the Church's teaching that abortion is the wrongful taking of innocent life in the womb and that artificial contraception and certain forms and programs of "sex education" or "family life education" promoted by certain organizations are morally wrong and inappropriate for children.

16. On June 1, 2012, starting at about 8:25 a.m., plaintiff and an Orthodox Jewish rabbi were present on public property at the Spring Valley extension campus building of defendant SUNY-ROCKLAND in response to an indoor meeting thereat, to which the general public was invited, between officials or representatives of, upon information and belief, the

Planned Parenthood of America Federation and Child Care Resources of Rockland, Inc., with State Assemblywoman Ellen Jaffee scheduled to speak.

17. Upon information and belief, the purpose of the meeting was to promote sex education programs for pre-kindergarten-age children, an objective which plaintiff finds morally, ethically, and religiously repugnant.

18. At the aforesaid place and time, on public property constituting a public forum, plaintiff began to distribute leaflets expressing his and the rabbi's objection to the goals of the meeting about to take place or taking place inside the building of defendant SUNY-ROCKLAND.

19. After plaintiff had distributed only about six leaflets, he was challenged by co-defendants JENKINS, KELSCH, NUNEZ and SERWATIEN to cease his First Amendment-protected activity in front of the building. On information and belief, said defendants had responded to the scene on account of complaints by as yet unknown persons about the content of plaintiff's speech and the aim of his demonstration, and the request of said persons that plaintiff be stopped.

20. Upon information and belief, this challenge to plaintiff's First Amendment-protected right to assemble, speak, protest, and distribute literature in a traditional public forum was based on the content of plaintiff's political message and on the content of the leaflets he was distributing.

21. Defendants JENKINS, KELSCH, NUNEZ and SERWATIEN verbally confronted plaintiff about the leaflets he had been distributing and repeatedly demanded that plaintiff leave the subject premises. Plaintiff replied that he had a right, under the First Amendment to the United States Constitution, to be there to convey his political and religious message to persons

entering the building for the aforesaid Planned Parenthood—Child Care Resources of Rockland, Inc. meeting and to passers-by.

22. Plaintiff FERRAO was then shoved towards the adjacent sidewalk by defendants JENKINS, KELSCH, NUNEZ and SERWATIEN. In reaction to this chilling of his First Amendment rights, plaintiff sat down and began praying, thereby ceasing the distribution of his literature, which activity had been chilled and prevented by said defendants.

23. Defendants NUNEZ, KELSCH, and JENKINS then bodily seized the plaintiff, lifted him by his arms and legs, and carried him to the sidewalk and adjacent grass in order to end his First Amendment-protected presence in front of the building, which was accessible to members of the general public and was the site of a meeting to which the public had been invited. This bodily seizure further chilled and prevented plaintiff's First Amendment-protected activity.

24. Defendant SGT. CUFFARI then arrived on the scene and, actuated by malice, proceeded to arrest plaintiff without probable cause on the charges of "trespassing and obstruction of governmental administration."

25. Plaintiff was not trespassing and did not obstruct the administration of any governmental agency.

26. Defendant SGT. CUFFARI arrested the plaintiff without reading him his rights ("Miranda warning") and without telling him that he was under arrest, even after plaintiff asked him.

27. Plaintiff was transported to Spring Valley Village Police Headquarters, where he was detained in a holding cell for several hours before being issued a desk appearance ticket charging him with trespass in violation of McKinney's New York Penal Law Section 140.05

(trespassing) and second-degree obstruction of government administration in violation of McKinney's New York Penal Law Section 195.05.

28. Plaintiff was not charged with "obstructing pedestrian traffic" or any other offense indicating that he had impeded the entry or exit of anyone from the SUNY-ROCKLAND building in which the subject meeting was being held. Yet the SUNY-ROCKLAND incident report falsely alleges, after the arrest, only that plaintiff was "aggressively handing out pamphlets" and "blocking the entrance." The report does not allege that plaintiff was "trespassing" because, in fact, plaintiff was not trespassing.

29. The defendants attempted to prosecute the plaintiff on the aforesaid alleged violations of the Penal Law of the State of New York. The proceedings continued for ten months in Spring Valley Village Court, necessitating four court appearances by plaintiff, beginning on June 5, 2012. On April 9, 2013, at the final appearance, both charges were dismissed pursuant to New York Criminal Procedure Law Section 170.55 (adjournment in contemplation of dismissal).

30. The aforesaid unlawful acts of co-defendants CUFFARI, JENKINS, KELSCH, NUNEZ and SERWATIEN, taken with malice aforethought and with the aim of punishing and retaliating against plaintiff for exercising his First Amendment rights, were under color and pretense of New York's trespass and obstruction of government administration statutes to harass, intimidate, and retaliate against pro-life advocates, including plaintiff, due to their political and religious message of opposition to such things as sex education programs for small children.

FIRST CAUSE OF ACTION
VIOLATION OF FIRST AMENDMENT RIGHTS
(42 U.S.C. SECT. 1983)

31. Plaintiff repeats and realleges each and every allegation of Paragraphs "1" to "30" of the Complaint and incorporates the same herein.

32. The actions of co-defendants CUFFARI, JENKINS, KELSCH, NUNEZ and SERWATIEN in suppressing plaintiff's distribution of leaflets, stopping him from praying, bodily seizing him, and then wrongfully arresting and detaining him, taken with malice aforethought and with reckless disregard of plaintiff's well-established constitutional rights, deprived plaintiff of his rights to freedom of speech, freedom of assembly, freedom of press, and the free exercise of religion under the First and Fourteenth Amendments to the United States Constitution.

33. Under the authority of *Johnson v. Bax*, plaintiff's acceptance of an adjournment in contemplation of dismissal is no bar to a claim for violation of his independent First Amendment rights based on defendants' conduct.

34. As a direct and proximate result of defendants' actions, plaintiff suffered harm in the form of deprivation of said First Amendment rights, for which he is entitled to compensatory and punitive damages and to declaratory and injunctive relief.

SECOND CAUSE OF ACTION
FIRST AMENDMENT RETALIATION
(42 U.S.C. SECT. 1983)

35. Plaintiff repeats and realleges each and every allegation of Paragraphs "1" to "33" of the Complaint and incorporates the same herein.

36. The First Amendment protected plaintiff's pro-life and anti-sex education advocacy.

37. The retaliatory actions of co-defendants CUFFARI, JENKINS, KELSCH, NUNEZ and SERWATIEN in suppressing plaintiff's distribution of leaflets, stopping him from praying, bodily seizing him, and then wrongfully arresting and detaining him, adversely affected plaintiff's constitutionally protected speech and public witness of religion, chilling and preventing their exercise as alleged more particularly above.

38. There was a causal relationship between plaintiff's speech and the said co-defendants' retaliatory actions, which were motivated in whole or in part by plaintiff's speech and his intended speech.

THIRD CAUSE OF ACTION
PUBLIC ENTITY LIABLITY
(42 U.S.C. SECT. 1983)

39. Plaintiff repeats and realleges each and every allegation of Paragraphs "1" to "33" of the Complaint and incorporates the same herein.

40. On information and belief, SUNY-ROCKLAND failed to provide adequate training to its security officers in how to recognize and protect a citizen's exercise of First Amendment rights in a public forum, resulting in the alleged misconduct by which defendants JENKINS, KELSCH, and SERWATIEN wrongfully interfered with plaintiff's First Amendment-protected activity.

41. In particular, on information and belief, defendants' actions indicate that they were not adequately trained and instructed on the nature of public forums as appropriate places for protest activity; that the location in question was of a type that qualified as a public forum in which First Amendment-protected protest activity could not be prohibited; that, accordingly, the presence of protesters there was not "trespassing"; that complaints about First Amendment-

protected activity from offended persons are no basis for restricting public forum speech; and that speech cannot be prohibited on the basis of its allegedly offensive content.

42. Said failure to train and instruct was a moving force in the violation of plaintiff's rights.

43. In the alternative, JENKINS, KELSCH, and SERWATIEN may have acted according to a policy of SUNY-ROCKLAND by which the area in which plaintiff was conducting his protest, which was public property and a traditional public forum, was unconstitutionally declared "off limits" to First Amendment-protected activity.

44. In the alternative, JENKINS, KELSCH, and SERWATIEN may have acted according to the directive of a final policy-maker or decision-maker in the SUNY-ROCKLAND security department.

45. SUNY-ROCKLAND is directly liable for the conduct of defendants JENKINS, KELSCH, and SERWATIEN because its failure to train and instruct, or its policy restricting speech, or the decision of its final policy-maker or decision-maker were a substantial cause of the violation of plaintiff's rights.

46. On information and belief, ROCKLAND COUNTY failed to provide adequate training to its sheriff's officers in how to recognize and protect a citizen's exercise of First Amendment rights in a public forum, resulting in the alleged misconduct by which defendants CUFFARI and NUNEZ wrongfully interfered with plaintiff's First Amendment-protected activity.

47. In particular, on information and belief, defendants' actions indicate that they were not adequately trained and instructed on the nature of public forums as places for protest activity; that the location in question qualified as a public forum in which First Amendment-

protected protest activity could not be prohibited; that, accordingly, the presence of protesters there was not "trespassing"; that complaints about First Amendment-protected activity from offended persons are no basis for restricting public forum speech; and that speech cannot be prohibited on the basis of its allegedly offensive content.

48. Said failure to train and instruct was a moving force in the violation of plaintiff's rights.

49. In the alternative, on information and belief, defendants CUFFARI and NUNEZ may have acted according to a policy of ROCKLAND COUNTY by which the area in which plaintiff was conducting his protest, which was public property and a traditional public forum, was unconstitutionally declared "off limits" to First Amendment-protected activity.

50. In the alternative, on information and belief, defendants CUFFARI and NUNEZ may have acted according to the directive of a final policy-maker or decision-maker in the Rockland County Sheriff's Department who authorized or directed plaintiff's arrest and detention.

51. ROCKLAND COUNTY is thus directly liable for the conduct of defendants CUFFARI and NUNEZ because its failure to train and instruct, or its policy restricting speech, or the decision of its final policy-maker or decision-maker were a substantial cause of the violation of plaintiff's rights.

PRAYER FOR RELIEF

WHEREFORE, plaintiff seeks judgment from this Court for the following relief:

A. Declaring that plaintiff's First Amendment rights were violated by the conduct of defendants JENKINS, KELSCH and SERWATIEN and by the failure to train, policy, or decision of SUNY-ROCKLAND.

B. Declaring that plaintiff's First Amendment rights were violated by the conduct of defendants CUFFARI and NUNEZ and by the failure to train, policy, or decision of ROCKLAND COUNTY.

C. Injunctive relief to prevent future violation of plaintiff's rights in connection with demonstrations at the subject location, including mandatory instruction on citizens' First Amendment rights in public forums;

D. An award of compensatory and punitive damages;

E. Reasonable attorneys' fees, costs, and expenses pursuant to 42 U.S.C. Section 1988 and other applicable law; and

F. Such other and further relief as this Court may deem just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury as to all issues so triable.

Dated: June 13, 2014

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